

Exhibit 12

Case Clip(s) Detailed Report
Monday, January 11, 2010, 7:32:30 PM

OK v Tyson

 **Peach, Terry (Vol. 01) - 04/10/2009**

1 CLIP (RUNNING 01:04:05.453)

 Peach

PEACH

152 SEGMENTS (RUNNING 01:04:05.453)



1. PAGE 5:12 TO 7:14 (RUNNING 00:02:02.082)

12 questions this morning. Will you tell us your name
13 and what you do for a living, please.
14 A. Yes. Terry Peach and I'm the Oklahoma
15 Secretary and Commissioner of Agriculture.
16 Q. Can you tell me just briefly what your
17 work background is?
18 A. Yes, sir. I attended school at Oklahoma
19 State University. From there went to teach
20 vocational agriculture in Oklahoma Public School
21 system. Moved back to Northwest Oklahoma and our
22 family farm and ranching operation. Worked there in
23 the oil field business until about 1993. Served from
24 '93 to 2000 as the FSA State Director for USDA. Went
25 back to the farm and ranch for two years and then
00006:01 came on board here in 2003 when Governor Henry became
02 governor and have served as Secretary and
03 Commissioner of Agriculture since that time, March of
04 2003.
05 Q. All right. With your Northeast Oklahoma
06 ranch, where is that?
07 A. It's Northwest Oklahoma.
08 Q. Did you say northwest?
09 A. Yes. In Woodward County, the last county
10 before the panhandle.
11 Q. All right. And what do you-all raise on
12 your ranch?
13 A. We're primarily a typical Western
14 Oklahoma. We have wheat and cattle, some irrigation,
15 alfalfa, and spring crops.
16 Q. All right. And is that something that you
17 still have an interest in?
18 A. Yes. My sons run that operation while I'm
19 the Commissioner of Agriculture.
20 Q. Do you use any sort of fertilizer on your
21 pastures where you have your cattle?
22 A. Yes, we use commercial fertilizers.
23 Q. Have you ever used any chicken litter or
24 anything?
25 A. No, I have not.
00007:01 Q. Okay. Is there a reason you don't use
02 chicken litter?
03 A. It's the cost prohibitive as far as
04 transportation and availability.
05 Q. All right. It's just not available where
06 you are?
07 A. Yes.
08 Q. If it were available, would you use it?
09 A. If it was cost effective, I would probably
10 use some poultry litter, yes.
11 Q. So you don't have any philosophical
12 objection to the use of poultry litter on cow
13 pastures?
14 A. No.

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21 A. Yes, sir.
22 Q. And the IRW is a nutrient-limited
23 watershed; is that correct?
24 A. Yes.
25 Q. And look on the next page, part F. It
00034:01 also says that poultry feeding operation shall
02 develop a plan for the disposal of carcasses
03 associated with normal mortality; is that correct?
04 A. Yes, sir.
05 Q. All right. And I'm going to ask more
06 about the animal waste management plan in just a
07 minute, but let me also -- if you would, turn just a
08 few pages more -- let me see. See if you can find
09 10-9.9. It's three or four pages over.
10 A. 10-9.8a; is that what you wanted me to
11 find?
12 Q. No, 9.9. Probably the next one over.
13 A. Okay.
14 Q. All right. Now this one -- this statute
15 provides that ODAFF can convert a dry litter
16 operation to a CAFO operation if ODAFF determines
17 that the operation is a significant contributor of
18 pollution to the waters of the state. Do you see
19 that?
20 A. Yes.
21 Q. Has ODAFF ever converted a dry litter
22 operation to a CAFO because of this statute?
23 A. That's a question I'd have to refer to
24 Mr. Parrish. I wouldn't be able to answer that.
25 Q. All right. Do you know of one?
00035:01 A. Not that I know of.

11. PAGE 36:18 TO 36:23 (RUNNING 00:00:27.421)

18 Q. (By Mr. Sanders) Okay. The next statute
19 on the next page is 10-9.10. And the first paragraph
20 of the statute provides that ODAFF authorized agents
21 can enter onto the premises of an operator any time
22 they want to; is that correct?
23 A. Yes, sir.

12. PAGE 36:25 TO 37:07 (RUNNING 00:00:19.125)

25 Q. (By Mr. Sanders) Do you know how often
00037:01 the -- your authorized agents actually do go onto the
02 premises of any of these facilities?
03 A. No, sir, I wouldn't have any idea. You'd
04 have to talk to Dr. -- Mr. Parrish.
05 Q. Do you have any idea what they might look
06 for when they do make such an inspection?
07 A. You'd have to talk to Mr. Parrish.

13. PAGE 38:19 TO 38:24 (RUNNING 00:00:20.761)

19 Let me ask you do you know if any --
20 first, do you know whether or not ODAFF has
21 prosecuted persons under this statute?
22 A. No, I do not know.
23 Q. Okay. Is that something -- would you know
24 if it occurred?

14. PAGE 39:01 TO 40:16 (RUNNING 00:03:20.851)

00039:01 Q. (By Mr. Sanders) Again I'm asking only
02 from the time that you've been there.
03 A. I would likely know from the time I've
04 been there, yes, sir, and I don't recall of any.
05 Q. Let me get you -- I missed one when I was

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07 A. No.

64. PAGE 71:09 TO 71:10 (RUNNING 00:00:03.520)

09 Q. (By Mr. Sanders) Does ODAFF consider that
10 rissoles are a hazardous substance?

65. PAGE 71:12 TO 71:15 (RUNNING 00:00:09.861)

12 A. No.
13 Q. (By Mr. Sanders) Does ODAFF consider that
14 wood shavings or any other media associated with
15 chicken litter are hazardous substances?

66. PAGE 71:17 TO 71:17 (RUNNING 00:00:00.756)

17 A. No.

67. PAGE 71:24 TO 72:01 (RUNNING 00:00:07.252)

24 turkey litter. Does the state of Oklahoma or does
25 ODAFF consider turkey litter to be a hazardous
00072:01 substance?

68. PAGE 72:03 TO 72:03 (RUNNING 00:00:00.575)

03 A. No.

69. PAGE 74:20 TO 75:04 (RUNNING 00:00:18.190)

20 I suppose in your work you deal with
21 farmers a lot; is that correct?
22 A. Yes.
23 Q. And I suppose that you know a lot of
24 farmers and have known a lot of farmers for a long
25 time?
00075:01 A. Yes, sir.
02 Q. Do you consider farmers to generally be
03 law-abiding people?
04 A. Yes.

70. PAGE 75:06 TO 75:10 (RUNNING 00:00:13.438)

06 A. Yes, sir.
07 Q. (By Mr. Sanders) And so far as you know
08 do farmers, at least the ones that you have contact
09 with or know of, do they generally obey the laws and
10 obey the regulation promulgated by ODAFF?

71. PAGE 75:12 TO 75:14 (RUNNING 00:00:06.164)

12 A. Yes, sir.
13 Q. (By Mr. Sanders) Do you believe that
14 farmers are generally concerned with the environment?

72. PAGE 75:16 TO 76:02 (RUNNING 00:00:45.328)

16 A. Yes, sir, they're very concerned.
17 Q. (By Mr. Sanders) All right. Are you
18 aware of any violations of Oklahoma law or ODAFF
19 regulations by any of the Defendants in this lawsuit?
20 And let me tell you who they are. It's a Tyson group
21 that includes Cobb-Vantress, Cargill, Inc. and
22 Cargill Turkey Production, Cal-Maine Foods, Inc. and
23 Cal-Maine Farms, Inc., Peterson Farms, Inc.,
24 George's, Inc. and George's Farms, Inc., Simmons
25 Food, Inc., and Willow Brook Farms, Inc. Are you
00076:01 aware that any of those Defendants have violated any
02 Oklahoma law or ODAFF regulations in the IRW?

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73. PAGE 76:03 TO 76:10 (RUNNING 00:00:12.004)

03 MR. HAMMONS: Object to the form.
04 A. I'd have to refer that question to Dan
05 Parrish, the director of that division, because there
06 may be violations that I'm unaware of.
07 Q. (By Mr. Sanders) All right. But as you
08 sit here today you're not aware of any violations by
09 any of those Defendants in the IRW?
10 A. No.

74. PAGE 78:16 TO 78:19 (RUNNING 00:00:14.708)

16 Q. (By Mr. Sanders) Doesn't the state of
17 Oklahoma develop programs to attempt to fence cattle
18 out of streams to prevent them from depositing bodily
19 waste into -- directly into the waters?

75. PAGE 78:21 TO 79:09 (RUNNING 00:00:34.536)

21 A. Yes, there are opportunities for voluntary
22 programs with partnerships with the NRCS and other
23 groups throughout the state to do that, yes, sir.
24 Q. (By Mr. Sanders) Okay. And like the
25 Oklahoma Conservation Commission has a role to play
00079:01 in that; is that correct?
02 A. Yes.
03 Q. Let me ask you about the Oklahoma
04 Conservation Commission. Are you -- are you aware
05 that the state of Oklahoma pays people through the
06 Oklahoma Conservation Commission to teach people how
07 to use litter, how to apply litter and use litter in
08 the IRW?
09 A. Yes, sir.

76. PAGE 79:11 TO 79:15 (RUNNING 00:00:14.726)

11 Q. (By Mr. Sanders) Is it odd to you that
12 the state of Oklahoma on the one hand pays employees
13 to teach people how to use litter in the IRW and on
14 the other hand the state of Oklahoma is suing to
15 prevent the use of litter in the IRW?

77. PAGE 79:17 TO 79:19 (RUNNING 00:00:01.627)

17 Q. (By Mr. Sanders) Does that seem odd to
18 you?
19 A. Yes, sir.

78. PAGE 80:19 TO 80:21 (RUNNING 00:00:06.618)

19 Q. And in low flow conditions all of that
20 matter doesn't get washed down to Lake Tenkiller
21 right away, does it?

79. PAGE 80:23 TO 81:03 (RUNNING 00:00:08.933)

23 Q. (By Mr. Sanders) Because the river -- the
24 flow in the creeks and river are low.
25 A. I can't speak to the flow of rivers and
00081:01 streams in Oklahoma.
02 Q. All right.
03 A. Or the Illinois River watershed.

80. PAGE 82:20 TO 83:03 (RUNNING 00:00:25.237)

20 Q. All right. Were you consulted by anyone
21 before this lawsuit was filed about the possibility
22 of a lawsuit being filed?
23 A. Yes.

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99. PAGE 92:01 TO 92:01 (RUNNING 00:00:00.722)

00092:01 A. Yes.

100. PAGE 92:07 TO 92:09 (RUNNING 00:00:07.643)

07 Q. (By Mr. Sanders) If you are asked will
08 you testify that ODAFF does not believe that all
09 litter application in the IRW should be stopped?

101. PAGE 92:11 TO 92:14 (RUNNING 00:00:08.398)

11 A. Yes.
12 Q. (By Mr. Sanders) And if asked you'll
13 testify that ODAFF has chosen not to stop litter
14 application in the IRW?

102. PAGE 92:16 TO 92:16 (RUNNING 00:00:00.998)

16 A. Yes.

103. PAGE 92:25 TO 93:04 (RUNNING 00:00:11.208)

25 Q. (By Mr. Sanders) Let me ask you this. If
00093:01 you are asked, will you testify that litter
02 application in the IRW is legal when done in
03 compliance with state law and applicable state
04 regulations?

104. PAGE 93:06 TO 93:13 (RUNNING 00:00:22.119)

06 A. Yes, sir.
07 Q. (By Mr. Sanders) And if asked you will
08 testify that ODAFF has never asked the Legislature to
09 ban litter usage in the IRW?
10 A. Yes, sir.
11 Q. And if asked you will testify that you're
12 not aware of any agency, either state or federal,
13 which has called for a litter ban in the IRW?

105. PAGE 93:15 TO 93:25 (RUNNING 00:00:25.597)

15 A. Yes, sir. And again, I'd refer that to
16 Dan Parrish, the director of that division.
17 Q. (By Mr. Sanders) All right. But so far
18 as you know as you sit here now you would answer yes
19 to that?
20 A. Yes.
21 Q. And if asked you will testify that ODAFF
22 can convert a dry litter operation to a CAFO
23 operation if ODAFF determines that the operation is a
24 significant contributor of pollution to the waters of
25 the state?

106. PAGE 94:02 TO 94:05 (RUNNING 00:00:10.364)

02 A. Yes.
03 Q. (By Mr. Sanders) And so far as you know
04 ODAFF has never so converted a dry litter operation?
05 A. Under my leadership we have not.

107. PAGE 94:07 TO 94:10 (RUNNING 00:00:13.753)

07 And if asked will you testify that ODAFF
08 does not impose an agronomic rate limits on the use
09 of organic phosphorus -- organic litter with regard
10 to phosphorus?

108. PAGE 94:12 TO 94:17 (RUNNING 00:00:15.855)

12 A. That's correct.